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Petition and Transcript of Record

Supreme Court of the United States

OCTOBER TERM, 1930

No. 323

SECOND NATIONAL BANK OF SAGINAW, SAGINAW, MICHIGAN, TRUSTEE OF THE ESTATE OF WELLINGTON R. BURT, DECEASED, PETITIONER,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED JULY 29, 1930

CERTIORARI GRANTED OCTOBER 20, 1930

(35,245)

(35,245)

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 323

SECOND NATIONAL BANK OF SAGINAW, SAGINAW, MICHIGAN, Trustee of the Estate of Wellington R. Burt, Petitioner

v.

THE UNITED STATES, Respondent

PETITION FOR WRIT OF CERTIORARI TO COURT OF CLAIMS

The petition of Second National Bank of Saginaw, Saginaw, Michigan, Trustee of the Estate of Wellington R. Burt, deceased, respectfully shows to this Honorable Court:

A

SUMMARY STATEMENT OF THE MATTER INVOLVED

Facts

Petitioner is a corporation and executor and trustee of the Estate of Wellington R. Burt, who died March 2, 1919. On April 1, 1918 the said Burt made an income tax return showing a tax due in the sum of $65,428.51 for the calendar year 1917, which was paid in 1918. In January 1921 the Commissioner of Internal Revenue assessed additional taxes against said Burt for the year 1917 in the sum of $28,336.07. On February 17, 1921, the plaintiff, as executor of the Estate of said Burt, filed a claim in abatement of the said tax of $28,336.07 on several grounds. On November 23, 1922 the Commissioner credited against said assessment the sum of $804.91, being the amount of an overpayment of income taxes for the year 1920, leaving a balance of $27,[fol. 2] 531.16 still due and unpaid. On May 24, 1923 the Commissioner rejected the claim in abatement, and on October 2, 1923 demanded of Plaintiff the balance of the additional assessment for 1917, together with interest there-

on, making a total of $31,729.66. Plaintiff paid this amount under protest on October 12, 1923 to the Collector of Internal Revenue. (R. 10).

On July 11, 1927 the plaintiff filed a claim for refund of taxes paid for the year 1917 in the sum of $32,534.57, being the amount of said additional assessment, together with interest paid thereon, on the ground that the same had been illegally collected after the statute of limitations had expired. The claim for refund was rejected by the Commissioner of Internal Revenue on September 1, 1928 and the petition in the Court of Claims was filed on February 4, 1929. (R. 1 and 11).

The Court of Claims made the following find of fact:

"Upon receipt of a claim in abatement it was the common practice to hold up the collection of an additional assessment The Collector of Internal Revenue acted in accordance with this practice in this case and in the exercise of his discretion actually held up the collection of the additional assessment and forwarded the said claim to the Commissioner of Internal Revenue in due course. The Collector made no further endeavor to collect the amount covered by the claim in abatement in this case until after the claim had been finally adjusted by the Commissioner of Internal Revenue". (R. 11).

The petition was based upon the ground that the amount of tax and interest referred to above ($32,534.57) was collected after the expiration of the statutory period allowed therefor by Section 9 (a) of the Revenue Act of 1916 and Section 250 (d) of the Revenue Act of 1921.

Statutes Involved

The statutes involved are Section 250 (d) of the Revenue Act of 1921 (42 Stat. 227, 265, 266) and Sections 607 and 611 of the Revenue Act of 1928 (45 Stat. 791, 874, 875).

Section 250 (d) of the Revenue Act of 1921 provides in part as follows:

[fol. 3] "The amount of income, excess profits, or war profits taxes due under any return made under * * * prior income, excess profits, or war profits tax acts * * * shall be determined and assessed within five years after

the return was filed * * * and no suit or proceeding for the collection of any such taxes due under this Act or under prior income, excess profits, or war profits tax acts * * * shall be begun, after the expiration of five years after the date when such returns was filed * * * ."

The five year period of limitations on assessment and collection provided for in the above section was reenacted in Section 277 (a) (2) of the Revenue Acts of 1924 and 1926.

Section 607 of the Revenue Act of 1928 provides as follows:

"Sec. 607. Effect of Expiration of Period of Limitations against United States.

Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid (whether before or after the enactment of this Act) after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim."

Section 611 of the Revenue Act of 1928 provides as follows:

"Sec. 611. Collections Stayed by Claim in Abatement.

If any internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) was, within the period of limitation properly applicable thereto, assessed prior to June 2, 1924, and if a claim in abatement was filed, with or without bond, and if the collection of any part was stayed, then the payment of such part (made before or within one year after the enactment of this Act) shall not be considered as an overpayment under the provisions of Section 607, relating to payments made after the expiration of the period of limitation on assessment and collection."

Decision

The Court of Claims gave judgment for the defendant and dismissed the petition. The decision was rested by the Court of Claims upon the principles announced by that Court in Oak Worsted Mills v. United States, 36 F. (2d) 529, and Gotham Can Company v. United States, 37 F. (2d)

793. (R. 12). The two cases referred to applied Section 611 of the Revenue Act of 1928 so as to prevent the recovery of taxes collected after the expiration of the statute of limitations.

[fol. 4] Questions Presented

The case presents a number of questions as to the construction and constitutionality of Section 611 of the Revenue Act of 1928. Among the questions presented are the following:

1. Does a proper construction of Section 611 of the Revenue Act of 1928 make it applicable to the case at bar?

2. Has Section 611 of the Revenue Act of 1928 any reference to suits by taxpayers, or does it merely define the authority of officials of the Government in making refunds and credits?

3. Does Section 611 of the Revenue Act of 1928 apply only to cases of voluntary payments and not to payments under protest?

4. Is the word "stay," as used in Section 611 of the Revenue Act of 1928, to be construed as denoting a "legal stay," or does it mean simply "delay"?

5. Is Section 611 of the Revenue Act of 1928 limited in its application to cases where collection of a tax is stayed by or as a result of the filing of a claim in abatement?

6. Are Sections 607 and 611 of the Revenue Act of 1928 to be given a retroactive construction so as to apply to cases arising prior to the enactment of the Revenue Act of 1928?

7. Does Section 611 of the Revenue Act of 1928 deprive the Court of Claims of jurisdiction of Petitioner's suit and Petitioner of its remedy, under Section 145 of the Judicial Code?

8. Is Section 611 of the Revenue Act of 1928 unconstitutional in that:

(a) It exceeds the power conferred upon Congress by the Sixteenth Amendment to lay and collect taxes on incomes, or

(b) Deprives taxpayers of property without due process of law in violation of the Fifth Amendment?

[fol. 5] B

REASONS FOR THE ALLOWANCE OF THE WRIT

I

The questions involved in this case with reference to Section 611 of the Revenue Act of 1928 are substantially the same as those involved in the case of Oak Worsted Mills v. United States, No. 104, October Term 1930, upon which the Court of Claims relied in the case at bar (R. 12), in which case this Court granted writ of certiorari to the Court of Claims on June 2, 1930. Similar questions as to the validity and effect of Section 611 of the Revenue Act of 1928 are involved in the following cases, in which this Court has granted writs of certiorari: Graham v. Goodcell, No. 36, October Term 1930, writ granted March 3, 1930; Magee v. United States, No. 65, October Term 1930, writ granted May 19, 1930; Taft Woolen Co. v. United States, No. 105, October Term 1930, writ granted June 2, 1930.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Court of Claims, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. K-47, Second National Bank of Saginaw, Saginaw, Michigan, Trustee of the Estate of Wellington R. Burt, Plaintiff, v. The United States, Defendant, and that the said judgment of the Court of Claims may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

Second National Bank of Saginaw, Trustee of the Estate of Wellington R. Burt, by W. A. Sutherland, Counsel for Petitioner.

Address of Petitioner's Counsel: Atlanta Trust Co. Bldg., Atlanta, Georgia.

[fol. 6] IN THE COURT OF CLAIMS

No. K—47

SECOND NATIONAL BANK OF SAGINAW, Saginaw, Michigan, Trustee of the Estate of Wellington R. Burt, Deceased, Claimant,

v.

THE UNITED STATES OF AMERICA, Defendant

I. PETITION—Filed February 4, 1929

To the Court of Claims of the United States and to the Honorable, the Chief Justice and Judges thereof:

The above-named claimant by this, its petition, respectfully shows:

1. The claimant at all times hereinafter mentioned was and is a domestic corporation organized and existing under the laws of the United States, engaged in the business of banking, with its principal place of business in the City and County of Saginaw, in the State of Michigan, and have permission granted by the Federal Reserve Board in a manner provided by the Statutes of the United States, to act as executor and trustee.

2. The said Wellington R. Burt died a citizen of the United States and a resident of the State of Michigan on March 2, 1919, leaving a last will and testament under which the claimant is named as executor and trustee. On August 13, 1920, letters testamentary were issued unto the [fol. 7] claimant as executor, and the final account of the claimant having been approved, the Probate Court for the said County of Saginaw, on May 24, 1922, assigned and distributed the assets of the estate to the claimant as trustee under the will of the said Wellington R. Burt, and thereupon the claimant duly qualified as such trustee and succeeded itself as executor, and has since and still does act as such trustee.

3. The claimant has a just claim against the United States for the refund of Thirty-two Thousand Five Hundred Thirty-four and 57/100 ($32,534.57) Dollars, being the

additional taxes and interest thereon paid by it to the Collector of Internal Revenue for the First District of Michigan, at Detroit, Michigan, on the dates hereinafter mentioned, as additional income and surtaxes, and interest thereon, for the calendar year 1917, which said sum was wrongfully assessed and collected by the Commissioner of Internal Revenue of the United States.

4. The provisions of the law under which such wrongful assessment and collection was made are contained in Section 1 of an Act of Congress approved September 8, 1916, entitled "An act to Increase the Revenue and for other Purposes," and known as the Revenue Act of 1916, as amended by Sections 1 and 2 of an Act of Congress approved October 3, 1917, entitled "An act to provide revenue to defray war expenses, and for other Purposes," and known as the Revenue Act of 1917.

5. The provisions of the law under which the claimant claims such refund are contained in Section 9 (a) of the [fol. 8] Revenue Act of 1916, Section 250 (d) of an Act of Congress approved November 23, 1921, entitled "An Act to Reduce and Equalize Taxation, to Provide Revenue and for Other Purposes," and known as the Revenue Act of 1921, and Section 3226 of the Revised Statutes of the United States.

6. Pursuant to the provisions of Section 3173 of the Revised Statutes of the United States, as amended, and of other Acts of Congress made and provided, the claimant on March 15, 1928, and on official form 1040, made to the Commissioner of Internal Revenue its return of income and surtaxes for the said calendar year 1917 and reported thereon the full sum of Sixty-five Thousand Four Hundred Twenty-eight and 51/100 ($65,428.51) Dollars, which said sum was fully paid to the Collector of Internal Revenue for the First District of Michigan, within the time prescribed by law.

7. The Commissioner of Internal Revenue audited and revised the return of income and surtaxes so filed by the claimant, and determined and assessed on the January, 1921, list additional taxes in the amount of Twenty-eight Thousand Three Hundred Thirty-six and 07/100 ($28,-

336.07) Dollars. On February 17, 1921, the claimant filed a claim in abatement of the said sum of Twenty-eight Thousand Three Hundred Thirty-six and 07/100 ($28,336.07) Dollars, which said claim was considered by the Commissioner of Internal Revenue, and by letter dated December 1, 1922, said claim was rejected in full, and said amount was finally rejected by the Commissioner of Internal Revenue by letter dated May 24, 1923.

[fol. 9] 8. The said Collector of Internal Revenue for the First District of Michigan, on or about October 1, 1923, made demand on claimant for the said additional assessment in the sum of Twenty-eight Thousand Three Hundred Thirty-six and 07/100 ($28,336.07) Dollars, which said demand was discharged by the payment of Twenty-eight Thousand Three Hundred Thirty-six and 07/100 ($28,336.07) Dollars, and Four Thousand One Hundred Ninety-eight and 50/100 ($4,198.50) Dollars interest on October 11, 1923.

9. On information and belief the claimant avers that the said sums so paid as original tax and as additional tax to the Collector of Internal Revenue for the First District of Michigan, were by the said official turned over to and deposited in the Treasury of the United States as in the usual course of the business of such official.

10. Pursuant to the provisions of Section 3220 of the Revised Statutes of the United States, as amended, and pursuant to the provisions of other acts of Congress, and on July 2, 1927, the claimant duly filed with the said Collector of Internal Revenue for the First District of Michigan at Detroit, Michigan, a claim for refund in the amount of Thirty-two Thousand Five Hundred Thirty-four and 57/100 ($32,534.57) Dollars, or such greater amount as is legally refundable, purporting to represent the said additional tax paid in the amount of Twenty-eight Thousand Three Hundred Thirty-six and 07/100 ($28,336.07) Dollars, and interest paid thereon. The basis of such claim is that the said additional tax and interest were illegally collected from the claimant after the expiration of the statutory [fol. 10] period in which the Commissioner of Internal Revenue could legally make such collection.

11. The Commissioner of Internal Revenue considered the said claim for refund so filed, and by his letter dated September 1, 1928, advised the claimant that the said claim would be rejected in full. A copy of said rejection letter is attached hereto and marked Exhibit "A."

12. The said sum of Thirty-two Thousand Five Hundred Thirty-four and 57/100 ($32,534.57) Dollars, representing additional tax and interest thereon, so paid to the said Collector of Internal Revenue, is wrongfully withheld from the claimant for the reason that it was collected from the claimant against its will and over its protest, after the expiration of the statutory period allowed therefor by Section 9 (a) of the said Revenue Act of 1916, and Section 250 (d) of the said Revenue Act of 1921, and the said amount so paid is, therefore, illegally withheld from the claimant.

13. The claimant further states that no suit or proceeding for collection of the said taxes has ever been instituted against it within the period of limitation as prescribed by law, nor have any valid waivers been filed by it extending the period for collection beyond that prescribed by law.

14. No other action than as aforesaid has been had on this claim in Congress or by any of the Departments. The claimant has at all times borne true allegiance to the Government of the United States. Claimant has not in any way voluntarily aided, abetted, or given encouragement to rebellion against such Government. Claimant is and always [fol. 11] has been, the sole and absolute owner of the claim here presented. Claimant has made no transfer or assignment of such claim or of any part thereof, or of any interest therein. Claimant is justly entitled to the amount claimed from the United States of America, after allowing all just credits and set-offs.

15. The claimant believes the facts as hereinabove stated to be true.

Wherefore the claimant prays judgment against the United States of America upon the facts and law for Thirty-two Thousand Five Hundred Thirty-four and 57/100 ($32,534.57) Dollars, together with interest thereon from

the date of payment, and its reasonable costs and disbursements.

Second National Bank of Saginaw, Trustee of the Estate of Wellington R. Burt, Deceased, by Edward W. Glynn, Vice-President and Cashier. (Seal.) Theodore B. Benson, Attorney for Claimant.

[fol. 12] *Duly sworn to by Edward W. Glynn. Jurat omitted in printing.*

[fol. 13] EXHIBIT "A" TO PETITION

[Seal.] Treasury Department, Washington

Office of Commissioner of Internal Revenue; IT:C; LHR.

Sep. 1, 1928.

Estate of Wellington R. Burt, c/o Second National Bank of Saginaw, Saginaw, Michigan.

SIRS: Your claim for the refund of $32,534.57, additional income tax with interest, assessed for the year 1917, has been examined.

The claim is based upon the statement that the above amount was collected after the Statute of Limitations on collection had expired, and that in accordance with the decision of the United States Supreme Court in the case of Bowers, Collector, v. New York and Albany Litherage Company, the tax, with interest, so collected is refundable.

An examination disclosed that your 1917 return was filed March 25, 1918, and that the additional assessment for $28,336.07 was listed in January, 1921, within five years from the filing date of your return, for which an abatement claim was filed February 17, 1921.

Section 611 of the Revenue Act of 1928 provides that in any case in which an assessment was made prior to June 2, 1924, and within the period of limitation on assessment, and in which a claim in abatement was filed, then the payment of any part of the tax, the collection of which was stayed, shall not be considered an overpayment under the provisions of Section 607 of the same act.

Your claim will, therefore, be rejected in full. The rejection will officially appear on the next schedule to be approved by the Commissioner.

Respectfully, C. B. Allen, Deputy Commissioned, by Charles P. Suman, Head of Division.

[fols. 14 & 15] II. General Traverse—Filed March 16, 1930

And now comes the Attorney General, on behalf of the United States, and answering the petition of the plaintiff herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

Herman J. Galloway, Assistant Attorney General.

L. A. S.

III. Submission of Case

On February 10, 1930, this case was submitted on merits, without argument by Mr. Theodore B. Benson, for plaintiff, and by Mr. Lisle A. Smith, for defendant.

[fol. 16] Special Findings of Fact, Conclusion of Law Opinion of the Court by Green, J.—Filed April 30, 1930

Mr. Theodore B. Benson for plaintiff.

Mr. Lisle A. Smith, with whom was Mr. Charles F. Kincheloe, for defendant.

This case having been heard by the Court of Claims, the court, pursuant to the stipulation of the parties, makes the following

Special Findings of Fact

Plaintiff is a corporation, and executor and trustee of the estate of Wellington R. Burt, who died March 2, 1919. On April 1, 1918, he made an income-tax return showing a tax due in the sum of $65,428.51 for the calendar year 1917, which was paid during the same year. Afterwards the

Commissioner of Internal Revenue audited and revised this return and in January, 1921, assessed additional taxes against said Burt in the sum of $28,336.07. On February 17, 1921, the plaintiff, as executor of the estate of said Burt, filed a claim in abatement of the said tax of $28,336.07 on several grounds. On November 23, 1922, the commissioner credited against said assessment the sum of $804.91, being the amount of an overpayment of income taxes for the year 1920, leaving a balance of $27,531.16 still due and unpaid. On May 24, 1923, the commissioner rejected the claim for abatement of said tax, and on October 2, 1923, demanded of plaintiff the balance of the additional assessment for 1917, to wit $27,531.16, together with interest thereon amounting to $4,198.50, a total of $31,729.66, and plaintiff, under protest, on October 12, 1923, paid said amount to the collector of internal revenue.

On October 25, 1923, the plaintiff filed a claim for refund of taxes assessed against said Burt for 1917 and 1918 in the sum of $109,054.56, and on October 1, 1925, plaintiff filed a second claim for refund, claiming a reduction of tax liability for the year 1917 in the sum of $17,538.50 and a refund of the sum of $97,963.08 on the taxes for the year 1917. No evidence was introduced to support the specifications made in either of these claims for refund.

[fol. 17] On March 31, 1926, the commissioner rejected the claim for refund for the year 1917 in its entirety, and on July 11, 1927, the plaintiff filed a third claim for refund of the taxes of 1917 in the sum of $32,534.57, being the amount of the said additional assessment, together with interest paid thereon, on the ground that the same had been illegally collected after the statute of limitations had expired, and stated that:

"This claim amends and supplements all claims for refund previously filed for this year."

On September 1, 1928, the commissioner rejected the third claim for refund.

The parties have stipulated and the court finds that if the plaintiff is entitled to recover anything in this action, the plaintiff is entitled to recover no greater sum than $31,729.26, with interest thereon from October 12, 1923; and also:

Upon receit of a claim in abatement it was the common practice to hold up the collection of an additional assessment. The collector of internal revenue acted in accordance with this practice in this case and in the exercise of his discretion actually held up the collection of the additional assessment and forwarded the said claim to the Commissioner of Internal Revenue in due course. The collector made no further endeavor to collect the amount covered by the claim in abatement in this case until after the claim had been finally adjusted by the Commissioner of Internal Revenue.

Conclusion of Law

Upon the foregoing special findings of fact, which are made part of the judgment herein, the court decides, as a conclusion of law, that plaintiff is not entitled to recover, and its petition is therefore dismissed.

Judgment is rendered against the plaintiff in favor of the United States for the cost of printing the record in this case, the amount thereof to be ascertained by the clerk and collected by him according to law.

Opinion

Green, Judge, delivered the opinion of the court:

This is an action to recover taxes which the evidence shows were collected after the period of limitations had expired.

Three claims for refund were filed, but the case turns entirely upon the third claim for refund, which was based on the fact that the taxes sought to be refunded had been collected after the expiration of the period of limitations.

The facts as stipulated by the parties and set out in the findings show that the taxes in controversy were assessed within the period of limitations, that a plea of abatement was then filed by plaintiff, and a little over two years thereafter the claim for abatement was denied. In the meantime a credit had been made on the tax in question of an overpayment on a tax for a later year.

The findings further show that upon receipt of a claim in abatement it was the common practice to hold up the

collection of an additional assessment and that the collector of internal revenue acted in accordance with the practice [fols. 18 & 19] in this case and made no endeavor to collect the amount covered by the claim in abatement until after the claim had been finally adjusted by the Commissioner of Internal Revenue.

The facts bring the case squarely within the rules announced by this court in the Oak Worsted Mills case, No. J—180, decided December 2, 1929, and the Gotham Can Co. case, No. J—255, decided January 20, 1930. Following the rules laid down in these cases, it is ordered that plaintiff's petition be dismissed.

Williams, Judge; Littleton, Judge; Graham, Judge; and Booth, Chief Justice, concur.

[fols. 20 & 21] V. JUDGMENT

At a Court of Claims held in the City of Washington on the 30th day of April, A. D., 1930, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court decides, as a conclusion of law, that the plaintiff is not entitled to recover and its petition is therefore dismissed.

By the Court.

[fol. 22] Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. 35,245. Court of Claims. Term No. 323. Second National Bank of Saginaw, Saginaw, Michigan, Trustee of the Estate of Wellington R. Burt, Deceased, Petitioner, vs. The United States. Petition for a writ of certiorari and exhibt thereto. Filed July 29, 1930. File No. 35,245.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 20, 1930

The petition herein for a writ of certiorari to the Court of Claims is granted, and the case is advanced and assigned for hearing immediately following case No. 105, Taft Woolen Co. vs. The United States.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(55)